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Attorneys for Defendants

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

BRIAN SMITH, on behalf of himself and
those similarly situated persons,

Plaintiffs,

v.

KELLOGG COMPANY and KELLOG
SALES COMPANY,

Defendants.

CASE NO. 2:17-cv-01914 APG-GWF

**STIPULATION TO EXTEND TIME TO FILE
REPLY IN SUPPORT OF MOTION TO COMPEL
ARBITRATION (First Request); TO PROVIDE
FOR SUR-REPLY; AND TO WITHDRAW
PENDING MOTION TO STRIKE**

ORDER

1 Pursuant to Local Civil Rule 6-1(a), Defendants Kellogg Company and Kellogg Sales
2 Company's ("Kellogg") and Plaintiff Brian Smith ("Mr. Smith"), by and through their respective
3 counsel of record, hereby stipulate to an extension of time for Kellogg to file its reply in support
4 of Motion to Compel Arbitration (Dkt. 55, filed September 15, 2017) and to Mr. Smith's filing of
5 a brief sur-reply, as follows:

6 WHEREFORE, on September 15, 2017, Kellogg filed a Motion to Compel Arbitration.
7 (Dkt. 55);

8 WHEREFORE, on September 21, 2017, Mr. Smith filed an unopposed motion to extend
9 time to file a response to the Motion to Compel Arbitration, extending the response deadline
10 from September 29, 2017 to October 6, 2017. (Dkt. 64);

11 WHEREFORE, on October 6, 2017, Mr. Smith filed an Opposition to Defendants'
12 Motion to Compel Arbitration. (Dkt. 71);

13 WHEREFORE, any reply by Kellogg was due on October 13, 2017;

14 WHEREFORE, counsel for Kellogg incorrectly calculated the new reply deadline,
15 inadvertently calendaring an incorrect deadline to file its reply in response to Mr. Smith's
16 Opposition;

17 WHEREFORE, on October 23, 2017, Kellogg filed its Reply in Support of Motion to
18 Compel Arbitration. (Dkt. 75);

19 WHEREFORE, on October 24, 2017, Mr. Smith filed a Motion to Strike Defendants'
20 Reply to Motion to Compel Arbitration. (Dkt. 77). Mr. Smith argued Kellogg had filed the
21 reply out of time and has raised a new issue in its reply, namely: an "argument requesting that
22 the Court stay the proceeding pending a decision by the Supreme Court on appeal of the *Morris*
23 *v. Ernst & Young, LLP*, 834 F.3d 975 (9th Cir. 2016) decision." (Dkt. 77 at 3);

24 WHEREFORE, on October 24, 2017, counsel conferred by way of telephone and email
25 and resolved the pending Motion to Strike Defendants' Reply to Motion to Compel Arbitration
26 (Dkt. 77) by agreement;

1 NOW, THEREFORE, the parties hereby STIPULATE that:

2 1. Kellogg's time to file a reply in support of its Motion to Compel Arbitration is
3 hereby extended to October 23, 2017. Kellogg's failure to file the reply before the previous
4 deadline expired was the result of excusable neglect as set forth above.

5 2. Mr. Smith shall have until October 31, 2017 to file a sur-reply no longer than five
6 pages to address Kellogg's argument that, if the Court does not compel arbitration, it should stay
7 the proceedings pending a decision by the Supreme Court on appeal of the *Morris v. Ernst &*
8 *Young, LLP*, 834 F.3d 975 (9th Cir. 2016) opinion.

9 3. Plaintiffs' Motion to Strike Defendants' Reply to Motion to Compel Arbitration
10 (Dkt. 77) is hereby withdrawn.

11
12 DATED: October 25, 2017

13 By: /s/ Michael J.D. Sweeney
14 Michael J.D. Sweeney, (*pro hac vice*)
15 Alex D. Dumas, ¶(*pro hac vice*)
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21 *Attorneys for Plaintiff*

22 DATED: October 25, 2017

23 By: /s/ Christiana L. Signs
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26 Christiana L. Signs (PA 317851) (*pro hac vice*)
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IT IS SO ORDERED.

29 
30 UNITED STATES DISTRICT JUDGE
31 Dated: October 25, 2017.

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4 Sacramento, CA 95814

5 *Attorneys for Defendants*

6 IT IS SO ORDERED:

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8 _____
9 HON. ANDREW P. GORDON
10 United States District Judge

11 DATED: _____
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